

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, including the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The findings and conclusions set forth in the Award of the Administrative Law Judge are set out in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are both accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein as to the issue raised.

The Administrative Law Judge, in granting claimant a 15 percent permanent partial scheduled injury to the left leg, took into account the medical evidence from Dr. Murphy, Dr. Rawcliffe, and Dr. Schlachter. Neither Dr. Murphy nor Dr. Rawcliffe gave claimant's allegations of permanent back injury any credence. Both found that claimant had suffered, at the very most, a temporary aggravation of his back with the only permanency being to the left knee.

Dr. Schlachter is the only doctor who found that claimant had permanently aggravated his back condition as a result of the injuries suffered on December 2, 1992, through January 22, 1993. It is noted in the record that when Dr. Schlachter was provided the history from claimant regarding his prior problems, claimant failed to inform Dr. Schlachter of his two to two and one-half year history of ongoing treatment for his back. This chiropractic treatment was necessitated by pain and limitations experienced by claimant on a semi-regular basis for a significant period of time. This lack of information regarding claimant's previous medical history causes the Appeals Board to doubt the accuracy of Dr. Schlachter's opinions as they are evidently based upon a less than accurate and less than complete history of claimant's back problems.

The Appeals Board, therefore, finds that as a result of the injuries suffered by claimant on December 2, 1992, claimant suffered a 15 percent permanent partial scheduled injury to the left leg.

In all other respects the Award of the Administrative Law Judge is affirmed insofar as it is not contrary to the opinions expressed herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated December 20, 1994, should be, and is hereby, affirmed.

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Justin D. Pennington, and against the respondent, Cessna Aircraft Company, and its insurance carrier, Aetna Casualty & Surety Company, for an accidental injury which occurred December 2, 1992, and based upon an average weekly wage of \$590.48, for 65 weeks of temporary total disability compensation at the rate of \$299 per week or \$19,435, followed by 20.25 weeks permanent partial disability at the rate of \$299 per week or \$6,054.75 for a 15% permanent partial scheduled injury to the left leg, making a total award of \$25,489.75, all of which is due and owing in one lump sum minus any amounts previously paid.

The Kansas Workers Compensation Fund has no liability in this matter with the exception of its own attorney's fees.

Fees necessary to defray the expense of administration of the Workers Compensation Act are hereby assessed against the respondent and its insurance carrier to be paid as follows:

Barber & Associates	
Transcript of Regular Hearing	\$259.50
Deposition of Ernest R. Schlachter, M.D.	\$158.00
Deposition of Jerry D. Hardin	\$261.00
Deposition Services	
Deposition of Ray Kimery	\$110.00
Deposition of Duane A. Murphy, M.D.	\$224.20
Deposition of Ben Bowers, D.C.	\$289.00

IT IS SO ORDERED.

Dated this ____ day of August 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Justin D. Pennington, Wichita, KS
James B. Zongker, Wichita, KS
Kirby Vernon, Wichita, KS
Marvin R. Appling, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director